

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Thomas L. Kelly	) Examiner:
		) A, Phi Dieu Tran
SERIAL NO.:	10/737,088	)
		) Group Art Unit: 3633
FILED:	December 16, 2003	)
		) Confirmation No. 5181
FOR:	HAIL DAMAGE-RESISTANCE ROOF	)
	ASSEMBLY AND METHOD FOR	)
	MAKING SAME	)

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**REPLY BRIEF**

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In Response to the Examiner's answer mailed August 5, 2009, Applicant respectfully submits a Reply Brief including the following Remarks:

## REMARKS

With regards to the Examiner's Response to Arguments (section 10 beginning on page 8 of the Examiner's Answer), Applicant would first like to respectfully apologize for some inconsistencies included in the Appeal Brief submitted on June 25, 2009.

First, Applicant respectfully notes that the reference to "multiple stationary nozzle blades" was made in error. Please ignore this typo.

Second, Applicant's references to Figure 31 of the Kelly disclosure with regards to Applicant's claim elements "a primary waterproofing membrane disposed over at least a substantial portion of said roof deck," (claim 18) and "a primary waterproofing membrane supported by said stiff material," (claim 17) were made in error. Applicant respectfully notes that the Actions previous to that which re-opened prosecution on October 9, 2008 included rejection based on Figure 31 as opposed to Figure 30. Rejection based on Figure 30 was not introduced until the Action of October 9, 2008, which followed Applicant's initial Appeal Brief.

In any event, Applicant respectfully apologizes for including arguments directed to Figure 31 of Kelly in the Appeal Brief submitted on June 25, 2009.

With the above said however, Applicant respectfully reiterates that Kelly does not teach:

"a secondary waterproof membrane *loose laid* over said energy absorbing layer," as recited in claims 17 and 18,

"a waterproof membrane *loose laid* over said frangible energy absorbing layer," as recited in claim 1, or

"a *loose laid*, non-reinforced waterproofing membrane with fabricated wrinkles disposed upon said gypsum board," as recited in claim 31.

In fact, the Examiner's comments as set forth in the Examiner's Answer (third paragraph of the Response to Argument (10) section) actually strengthen Applicant's argument in this regard. At this section of the Examiner's Answer, the Examiner states that "The membrane is **attached** to the roof supporting members (12, 14)," wherein roof supporting member 14 is equated with Applicant's "energy absorbing layer" and "gypsum board." Since, one of ordinary skill in the art would certainly understand "loose laid" to mean laid without a secure attachment (in this case a secure attachment to the energy absorbing layer therebelow), the attachment **admitted** by the Examiner precludes any teaching of "loose laying" the membrane 9 over or upon the roof supporting member 14 in the Kelly reference.

The Examiner's further comment that "It is also noted that while applicant claims "loose laid", applicant's roof membrane roof membrane is also attached to the roof at locations so that the membrane does not fly off due to wind," is respectfully indicative of a lack of understanding of the invention and art by the Examiner. First of all, while Applicant's Figures and Description demonstrate a membrane that is attached "at locations" of the roof, this membrane **is not attached to the energy absorbing layer** upon which it is disposed or laid over. In fact, each of Applicant's relevant Figures shows the membrane 22 to be loose laid over the energy absorbing material upon which it is disposed (as claimed), wherein the membrane 22 is fastened to some other roofing structure. Accordingly, unlike Figure 30 of the Kelly reference (as admitted by the Examiner) Applicant's disclosure does not show attachment of the membrane to the energy absorbing layer it is disposed upon. Thus, Applicant's Figures support the "ordinary skill in the art" definition of "loose laid."

Second, Applicant respectfully reiterates that the claimed loose laying of the membrane is important to hail resistance in that a membrane fixed to the energy absorbing layer therebelow would be more likely to rupture due to hail impact. Accordingly, Applicant's invention would not work effectively if, as suggested by the Examiner, the membrane 22 were to be affixed to the energy absorbing layer, as shown in Figure 30 of Kelly.

Applicant would lastly and respectfully like to note that Figure 30 of Kelly does not show any sort of “wrinkle” in the membrane 9, as is alleged by the Examiner at page 7, item 7 of the Examiner’s Answer.

Further, Applicant respectfully notes that dependent claims 11-16 and 24-29 recite “at least one intentional wrinkle to allow for gathering.” The Examiner alleges that Figures 15 and 25-26 of Kelly (please see page 4 of the Examiner’s Answer) teach such a wrinkle. Applicant respectfully traverses, noting that the mere bend in the membrane 9 demonstrates nothing of a “gathering” of membrane, as is required by Applicant’s claims 11-16 and 24-29.

For the reasons cited above, Appellant respectfully submits that the rejections are improper. Reversal of the outstanding rejections is respectfully requested. If there are any additional charges with respect to this Appeal or otherwise, or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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